

1 COURT OF COMMON PLEAS  
2 HAMILTON COUNTY, OHIO  
3  
4 - - -

5 J.E. GROTE COMPANY, INC., :  
6 Plaintiff, :  
7 vs. : CASE NO. A9707796  
8 INNOMATION, INC, f/k/a KEARNEY :  
9 MAGNETICS & ENGINEERING, INC., :  
10 Defendant. :  
11 - - -

12 The deposition of CHRISTOPHER KEARNEY, a  
13 witness herein, taken by the plaintiff as upon  
14 cross-examination pursuant to the Ohio Rules of Civil  
15 Procedure and pursuant to Notice and stipulations  
16 hereinafter set forth, at the offices of Strauss &  
17 Troy, 2100 PNC Center, 201 East Fifth Street,  
18 Cincinnati, Ohio, at 12:40 p.m. on May 4, 1998,  
19 before Renee Rogers, a notary public within and for  
20 the State of Ohio.

21 - - -  
22  
23 Cin-Tel Corporation  
24 813 Broadway  
Cincinnati, Ohio 45202  
(513) 621-7723

982392



1 APPEARANCES:

2 On behalf of the Plaintiff:

3 CHRISTY A. HOCHANADEL, ESQUIRE  
4 J.E. Grote Company, Inc.  
5 1160 Gahanna Parkway  
Blacklick, Ohio 43004  
(614) 868-8414

6 On behalf of the Defendant:

7 CHARLES H. MELVILLE, ESQUIRE  
8 Strauss & Troy  
2100 PNC Center  
201 East Fifth Street  
9 Cincinnati, Ohio 45202-4186  
(513) 621-2120

10

11 S T I P U L A T I O N S

12 It is stipulated by and among counsel for the  
13 respective parties that the deposition of Chris  
14 Kearney may be taken at this time by the plaintiff as  
15 upon cross-examination, pursuant to the Ohio Rules of  
16 Civil Procedure and pursuant to Notice and agreement  
17 of counsel as to the time and place; that the  
18 deposition may be taken in stenotypy by the notary  
19 public-court reporter and transcribed by her out of  
20 the presence of the witness; that the deposition is  
21 to be submitted to the deponent for his examination  
22 and signature, and that the signature may be affixed  
23 out of the presence of the notary public-court  
24 reporter.

1

I N D E X

2

3       Witness

Cross

4       CHRISTOPHER KEARNEY

5       By Ms. Hochanadel

4

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7

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9       E X H I B I T S

10

Marked

11       Plaintiff's Exhibit Number 1

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12       Plaintiff's Exhibit Number 2

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13       Plaintiff's Exhibit Number 3

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14       Plaintiff's Exhibit Number 4

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1 MS. HOCHANADEL: Okay. My name is  
2 Christy Hochanadel. I represent the Grote  
3 Company. I'm here to depose you today.

4 If at any time during the deposition  
5 you don't understand or can't hear any of my  
6 questions, please let me know and I'll  
7 restate them for you.

8 Also, make sure you give verbal  
9 responses and not nods for the court  
10 reporter.

11 And please let me finish answering --  
12 or finish my question before you answer, and  
13 I'll let you finish your answer.

14 THE WITNESS: Okay.

15 CHRISTOPHER KEARNEY,  
16 of lawful age, as having been duly sworn, was  
17 examined and testified as follows:

18 CROSS-EXAMINATION

19 BY MS. HOCHANADEL:

20 Q Let's start with your name, full name.

21 A Christopher L. Kearney, K-E-A-R-N-E-Y.

22 Q Okay. And your address?

23 A 1 -- my business or home?

24 Q Home.

1                   A    12168 Village Woods Drive, Cincinnati  
2       45241.

3                   Q    And how old are you?

4                   A    45.

5                   Q    Okay. Are you married?

6                   MR. MELVILLE: How old?

7                   THE WITNESS: 45.

8                   MR. MELVILLE: I didn't think he was  
9                   that old.

10                  Q    Are you married?

11                  A    No, I'm not.

12                  Q    Do you have any children?

13                  A    No.

14                  Q    Tell me about your education. Where  
15                  did you go to high school?

16                  A    I went to Saint Ignatius,  
17                  I-G-N-A-T-I-U-S, in Cleveland, Ohio.

18                  Q    Okay.

19                  A    High school.

20                  Q    Where did you go to college, or did you  
21                  go to college?

22                  A    I went to the University of Dayton,  
23                  Dayton, Ohio.

24                  Q    Okay. And did you graduate?

1 A Yes.

2 Q Okay. What was your degree in?

3 A Psychology. It was a minor in  
4 philosophy.

5 Q Okay. What is your current position?

6 A I am president of Innomation.

7 Q Okay. Are you a shareholder in the  
8 company?

9 A Yes, I am.

10 Q Are you the sole shareholder?

11 A Yes, I am.

12 Q And as the president, what are your  
13 duties and responsibilities?

14 A They're varied. I do the accounting,  
15 sales, I sometimes sweep up the floor, clean the  
16 johns. We're a small company.

17 Q What was your experience -- well, first  
18 of all, when did you start the company?

19 A Approximately four years -- four or  
20 five years ago. I can't recall exactly.

21 Q Okay. And then did the company have a  
22 different name at that time?

23 A Yes. Kearney Magnetics and  
24 Engineering.

1                   Q     When did the company change to  
2     Innomation?

3                   A     I think it was April of last year, a  
4     little over a year ago.

5                   Q     Has the structure of the company  
6     changed?

7                   A     No.

8                   Q     Okay. So it was simply a name change?

9                   A     Just a name change.

10                  Q     Okay. Why did you change the name to  
11     Innomation?

12                  A     Because we make automated equipment and  
13     the name "magnetics," we were getting a lot of calls  
14     for health magnetic field things and I just -- we  
15     just thought it was a more appropriate name for what  
16     we do.

17                  Q     Okay. Was it -- prior to being Kearney  
18     Magnetics, was there any other type of organization?

19                  A     Was it? That was incorporated as  
20     Kearney Magnetics and Engineering.

21                  Q     I have a -- let's see here. Excuse me  
22     for a minute while I find this.

23                  (Whereupon, Plaintiff's Exhibit Number  
24     1 was marked for identification.)

1 Q I'm going to hand you Plaintiff's  
2 Exhibit Number 1. Actually, here. You get this  
3 copy.

4 A I get this copy?

5 Q Yeah.

6 MR. MELVILLE: Do you have a copy for  
7 me?

8 MS. HOCHANADEL: Can you share?

9 MR. MELVILLE: Sure.

10 Q I just am curious as to the form of the  
11 company. Had it changed? I know it was crossed out  
12 up there at the top where it said representing AEC --

13 A Magnetics.

14 Q -- Magnetics. Yes. What was --

15 A Well, we formally represented AEC  
16 Magnetics. They make magnets. And we had a sales  
17 agreement with them.

18 Q Okay.

19 A They're our local firm.

20 Q Was that the sole work that you did,  
21 then, was for that company? How did that work?

22 A No. We also -- and engineering. We  
23 did engineering as well, built special equipment.

24 Q Okay.

1                   A     So we did both. We sold for a company  
2     that made magnetics, but we also did engineering as  
3     well.

4                   Q     So you sold -- your duty -- describe to  
5     me that relationship a little.

6                   A     It's been awhile. We were a  
7     distributor for a company that makes lifting magnets  
8     for industry.

9                   Q     So they actually manufactured them and  
10    you sold them; is that correct?

11                  A     Yes.

12                  Q     Is that how you got started?

13                  A     Me? In business?

14                  Q     In this business. Is that how this  
15    business got started?

16                  A     That's how this business got started.  
17    We also used the name "engineering" because Guy Lampe  
18    has many years' experience in engineering. And we  
19    wanted to convey that we did engineering as well.

20                  Q     Okay. All right. I just wanted to get  
21    an idea of the formation. So it looks like you've  
22    also -- you changed the address of the corporation as  
23    well?

24                  A     Yes.

1 Q Okay. You had two locations?

2 A We had two locations at one time. We  
3 had a location in Toledo also, a sales office.

4 Q At this point in time, what is your  
5 address of your company?

6 A 11126 Luschek Drive, Cincinnati, Ohio.

7 Q And is that the only address? Is that  
8 the only place the company is?

9 A Yes.

10 Q Okay.

11 A Well, I have an office in my home, too,  
12 which is 12168 Village Woods Drive.

13 Q Prior to starting Kearney, tell me a  
14 little bit about your experience. I guess start  
15 after you got out of college.

16 A I worked in a grocery store for about a  
17 year because there weren't many jobs available just  
18 after college. And then I started as a  
19 manufacturer's agent with a sales organization and  
20 performed duties as a manufacturer's representative  
21 for 20 years.

22 Q With the same organization?

23 A I was always technically self-employed,  
24 so, yes. I mean, companies changed, principals

1 changed, but basically I was the organization.

2 Q And as a manufacturer's representative  
3 or agent, what did you do?

4 A I would contact companies like JE  
5 Grote and try to sell various component parts,  
6 fabrications, machined parts.

7 Q Okay.

8 A And my products changed over the years.

9 Q Okay.

10 A But stayed in the industrial field.

11 Q And those were manufactured, then, by  
12 other companies?

13 A Right.

14 Q So was Kearney your first experience in  
15 actually manufacturing equipment?

16 A Kearney Magnetics and Engineering?

17 Q Yes.

18 A I'm just trying to think if I ever  
19 manufactured anything over 20 years. It was  
20 basically my first manufacturing experience.

21 Q Okay. Would -- at this present time,  
22 what other assets does the company own -- Kearney  
23 own?

24 A Innomation?

1 Q Innomation. I apologize.

2 A Innomation owns a lunch table, a couple  
3 book shelves, one desk, and a few bench tools, and  
4 that's just off the top of my head.

5 Q Okay. Do you operate out of a  
6 building?

7 A Yes.

8 Q Do you rent the building?

9 A Yes.

10 Q Is Innomation a shareholder in any  
11 other corporations?

12 A No.

13 Q Describe the business that Innomation  
14 is in.

15 A Innomation makes custom equipment.

16 Q What type of custom equipment?

17 A Primarily industrial.

18 Q Okay. Does it specialize in any  
19 certain type of equipment or --

20 A No. Our markets are pretty extensive  
21 and our capabilities are pretty extensive. Custom  
22 designed equipment.

23 Q How many employees are currently  
24 employed by Innomation?

1           A     Three.

2           Q     Could you please name the employees.

3           A     Matt Spears, Jay Sanders [sic] and Chad  
4           Lamb, C-H-A-D, L-A-M-B.

5           Q     And what are their titles?

6           A     Jay -- Jay Sanders is -- Sander, his  
7           title is senior project engineer. Matt Spears is  
8           design engineer, and Chad Lamb is sales engineer.

9           Q     In September of '96 could you please  
10          name the employees that worked at Innomation?

11          A     Including a secretary?

12          Q     Yeah. Everybody.

13          A     Bev Schwartz, secretary,  
14          S-C-H-W-A-R-T-Z; Guy Lampe, and I'm not sure -- I'm  
15          not sure exactly if Matt started -- Matt Spears was  
16          with me in late September or early October, somewhere  
17          in there.

18          Q     And what was Guy's title?

19          A     Engineering manager. I believe it  
20          was -- I'm not sure if he had that title at that  
21          time, but at some point he became engineering  
22          manager.

23          Q     Okay. Is Innomation involved in any  
24          pending lawsuits besides Grote right now?

1 A Yes. Yes.

2 Q Could you describe those?

3 A I can tell you the one is BW Rogers.

4 Q And just briefly what is that about?

5 A It's about some equipment that we  
6 failed to pay for.

7 Q Any others?

8 A And Cincinnati Belting.

9 Q And what's that regarding?

10 A It's regarding our failure to pay since  
11 we have not gotten paid by JE Grote.

12 Q Any others?

13 A No.

14 Q Any lawsuits prior to Grote's lawsuit  
15 and prior to these?

16 A We had a small-claims lawsuit on a  
17 leasing company of a forklift.

18 Q Is that all?

19 A Yes.

20 Q Tell me how you became acquainted with  
21 the Grote Company.

22 A I became aware of Grote early on,  
23 probably 15, 20 years ago and called probably on your  
24 father. I'm not sure, but I don't know. I don't

1 have records back then but I don't know who -- who I  
2 called on, but -- .

3 Q Was that when you were a manufacturer's  
4 representative?

5 A Yes.

6 Q For a different --

7 A In the seventies, late seventies.

8 Q So it was a different manufacturer at  
9 that point in time?

10 A Yes. I can't even remember what I was  
11 trying to sell.

12 Q Okay.

13 A And --

14 Q How about --

15 A Recently?

16 Q Recently.

17 A I called on JE Grote about five or six  
18 years ago, maybe four -- I'm not sure -- for Deltech  
19 in Batavia, Ohio who makes stainless steel  
20 fabrications. And we sold you a few fabrications.

21 Q And then with Innomation, how did you  
22 become acquainted?

23 A Chuck Searl called me in January of --  
24 I think 1996 to come in and look at this blade

1 project. I think John Williamson told him that we  
2 also can make automated equipment.

3 Q Okay. So describe the first time that  
4 you came in to talk to the Grote Company.

5 MR. MELVILLE: By the first time, the  
6 recent one with Innomation?

7 Q The recent one with Innomation.

8 A With Chuck Searl?

9 Q When he called you in.

10 A Okay. And it was Kearney Magnetics  
11 back then.

12 Q Right.

13 A I'm trying to think. I mean, it was a  
14 long time ago. I met Chuck and I believe that he  
15 introduced me to John and briefly described what you  
16 wanted to do with these blades, and took me back to  
17 the blade area.

18 And I believe he introduced me to Bill,  
19 just a quick introduction. And he told me the scope  
20 of what project you were under way to automate your  
21 production.

22 Q Okay. At that time did you get into  
23 any conversations about speed or the method of  
24 winding or tying the blades?

1                   A     We saw your method and it was pointed  
2       out that Grote wanted to reduce worker injuries from  
3       cuts.  As far as the packaging.  We also considered  
4       the welding.

5 But as far as the blade packaging,  
6 there was major concerns about carpal tunnel. I  
7 don't know if -- I can't recall if you had any recent  
8 cases, but also with workers cutting themselves and  
9 getting stitched up, and then the lack of -- lack of  
10 time that any of your workers could do that for.

11 It was my understanding that there was  
12 a lot of workers that came and went. You hired them,  
13 they cut themselves a few times, few weeks later they  
14 got sick of the job and quit. So you wanted to  
15 automate it for basically those reasons. Speed was  
16 not -- not an issue.

17 Q So you don't remember talking about  
18 production rates or anything like that?

19 A No.

30                    0                okay.

A NO. The only thing we -- never mind.

33 Q Okay.

23 (Whereupon, Plaintiff's Exhibit Number  
24 2 was marked for identification.)

1 Q Okay. I'm going to hand you  
2 Plaintiff's Exhibit Number 2.

3 MS. HOCHANADEL: If you would like me  
4 to make more copies. I apologize. I only  
5 brought one for both of you.

6 Q Could you please describe this for me,  
7 tell me what this is.

8 A This is a letter to Terry Griffith from  
9 Chris -- from me, Chris.

10 Q Okay. Could you look at the entire --  
11 the entire exhibit for me. I believe there's more  
12 than one page.

13 A It's our quote, Kearney Magnetics  
14 Quote, KME0047, revision D, September 12, 1996.

15 Q Okay. Could you turn to page eight for  
16 me. And is that your signature where it says  
17 approved by?

18 A Yes.

19 Q Okay. Were you signing on behalf of  
20 Kearney Magnetics at that time?

21 A Yes.

22 Q Did you have authority to sign as  
23 president of the company?

24 A Yes.

1 Q Okay. So you had authority to enter  
2 into contracts?

3 A Pardon me?

4 Q So you had authority to enter into  
5 contracts with a company?

6 A Yes.

7 Q Okay. Let's turn to page two, if you  
8 could. Actually, could you tell me who prepared this  
9 contract?

10 A Bev Schwartz.

11 Q Okay. Was she an employee of  
12 Innomation?

13 A Yes.

14 Q Okay.

15 A She typed it up. Is that what you mean  
16 by prepared?

17 Q Prepared. Prepared the language.

18 A Oh, the language, Guy Lampe primarily.

19 Q Okay. And he was an employee of  
20 Innomation as well; is that correct?

21 A Yes.

22 Q Okay. The very first paragraph there,  
23 could you please describe to me what that says?

24 A It says quote number KME0047, revision

1 C, saw blade packaging machine.

2 Q The first paragraph there, after that.

3 A Oh. This proposal is limited to one  
4 machine designed, manufactured and built to coil  
5 various lengths of continuous length saw blades.  
6 This machine will be capable of packaging  
7 approximately 420 saw blades per hour.

8 Q Okay. To your knowledge, is the  
9 machine that was delivered capable of packaging 420  
10 saw blades per hour?

11 A I think it is capable of doing 420  
12 small -- of the small blades.

13 Q Of the -- why do you believe that?  
14 What leads you to believe that?

15 A Because I have a film that shows it's  
16 very quick.

17 Q Did you -- do you have any timing  
18 records of the machine?

19 A No. Because we never were given a time  
20 after we got flat cardboard sheets to actually do a  
21 professional timing of the machine. We were  
22 instructed to -- we had a deadline to meet.

23 Q Do you have that --

24 A It was only with less than a week of

1           A     I feel it's possible, but I can't state  
2     that for certain. There's never been a professional  
3     timing of the machine.

4           Q     Would it be capable of packaging our  
5     regular and longer length blades?

6           A     It does -- it's capable of packaging  
7     your regular.

8           Q     At 420 saw blades per hour?

9           A     I don't know.

10          Q     At the run-off that you did on December  
11         5, did the machine achieve a rate of 420 saw blades  
12         per hour?

13          A     The machine apparently was timed with  
14     an inexperienced operator who made a multitude of  
15     errors, and I don't consider that a really fair  
16     run-off and a fair timing of the machine.

17          I think that -- I think that the  
18     machine is operator-dependent and the operator  
19     clearly -- even Jay is not an experienced operator.  
20     I don't know.

21          Q     Is it --

22          A     I don't know all the data, but I have  
23     reviewed films.

24          Q     Was the machine manufactured to be run

1 good cardboard carriers that were flat to spec.

2 Q Do you believe that the machine is  
3 capable of packaging at this speed all of the types  
4 of blades that Grote manufactures in all of the  
5 lengths?

6 A No. It was never intended to package  
7 all of your lengths. There are some blades that have  
8 been excluded such as the saber tooth -- saber  
9 blade.

10 I don't know -- I don't -- I don't have  
11 a part number here, but there are blades that were  
12 excluded from performance by this machine.

13 Q To your knowledge, was the machine  
14 intended to coil -- to wind and coil all lengths of  
15 our blades?

16 A No. I just stated that it was not  
17 intended to coil several particular blades that you  
18 supply to your customers.

19 Q But I guess I'm talking about lengths.

20 A Lengths?

21 Q Your statement -- am I correct that  
22 your original statement was that you feel it is  
23 capable of packaging approximately 420 of our smaller  
24 blades? Is that what you said? Is that correct?

1 by a production worker at the Grote Company?

2 A With training.

3 Q What would the training have entailed?

4 A I would have to -- I would have to -- I  
5 don't know exactly. I would have to refer that  
6 question to my engineers.

7 Q Okay. Can you look at section one of  
8 the contract for me.

9 A Um-hmm.

10 Q It's 1.0.b.2. Could you read that for  
11 me.

12 A Two plastic tie devices to tie the  
13 coiled saw blade to the tray.

14 Q Would you agree that the tie devices  
15 were incorporated, then, in the original contract  
16 between Grote and Innomation?

17 A The original proposal or the original  
18 contract?

19 Q The contract between the parties.

20 A It's in this contract.

21 Q Is this -- do you know of any other  
22 contracts between the parties?

23 A No, I don't.

24 Q Okay.

1                   THE WITNESS: Could I have a word with  
2                   my attorney? I mean just --

3                   MS. HOCHANADEL: Sure.

4                   (A discussion was held off the record.)

5                   Q        Okay. Section two, could you please  
6                   tell me what that says? You can describe it. You  
7                   don't have to read it word for word if you don't want  
8                   to.

9                   A        A programmable controller will provide  
10                  coordination between the electrical operators and  
11                  motors and to monitor the number of blades put into  
12                  the shippers and count shippers. It will also allow  
13                  for quick changes needed for different blade lengths.

14                  Q        To your knowledge, did the machine that  
15                  was delivered contain a programmable controller?

16                  A        Yes.

17                  Q        Okay. Was the programmable controller  
18                  according to the specifications set forth in this  
19                  contract?

20                  A        Yes.

21                  Q        And agreed to by the parties?

22                  A        Yes.

23                   (Whereupon, Plaintiff's Exhibit Number  
24                  3 was marked for identification.)

1 Q I'm going to hand you Exhibit Number  
2 3. Could you please tell me what -- I'm sorry.  
3 There you go. Could you please tell me what this is?

4 A This is a letter to Chuck Searl from  
5 Chris Kearney.

6 Q Okay. And let's see. What are you --  
7 what are you requiring in this letter? Could you  
8 read to me, let's see, number four.

9 A Any preferences to electrical  
10 components, pneumatic components, other components.

11 Q Did -- after you -- after you asked  
12 whether or not the Grote Company had any preference,  
13 did you receive a response to that?

14 Did anyone from the Grote Company ever  
15 tell you or any of your engineers a specific type of  
16 component to be used in the machine?

17 A Not to my knowledge.

18 Q So you're unaware of any conversations  
19 about a Mitsubishi programmable controller?

20 A Guy Lampe probably did most of the  
21 discussions. I wrote the letter, but he did the  
22 discussions.

23 Q Okay.

24 A So I'm not aware.

1 Q Also, there, number two, could you  
2 please tell me what that says?

3 A We need to have a list -- the band saw  
4 types?

5 Q Uh-huh.

6 A Is that what you mean? We need to have  
7 a list of all lengths, code numbers, with any  
8 potential future sizes.

9 Q Okay. And did you receive a list from  
10 the Grote Company?

11 A Yes, we did.

12 Q Okay. And do you have a copy of that?

13 A I'm sure we do. I mean, I would have  
14 to hunt through all my notes and all of my records.

15 Q Okay. I want to go back to the  
16 contract, Exhibit Number 2.

17 A Is this --

18 Q You can go ahead and keep that. On  
19 page four at the top where it says pricing includes,  
20 can you tell me what's included in the price?

21 A Mechanical and electrical engineering,  
22 frames and drives, electrical and pneumatic controls,  
23 guarding and safety devices, shipping and  
24 installation assistance, eight hours' training at

1 your facility, manual and parts lists.

2 Q Were there any limits put on the  
3 engineering that was provided with this?

4 A I don't understand your question.

5 Q Were there any -- were there any limits  
6 on the time of engineering that would be put into  
7 this project by Kearney, the amount involved?

8 A Amount of dollars?

9 Q The amount of engineering time. Was  
10 there any limits put on the amount of engineering  
11 time?

12 A No.

13 Q Does it specify in here what exactly is  
14 shipping and installation assistance?

15 A It does not specify anything further  
16 than what it says.

17 Q Okay. Under the delivery, can you tell  
18 me what the delivery term was?

19 A Seven months ARO and check.

20 Q Is ARO, does that mean after receipt of  
21 order? Is that correct?

22 A Yes.

23 Q And when was this order received?

24 A When was it received? I can't give you

1       the specific date. I mean, it was in September, I  
2       believe.

3           Q      When was it signed?

4           A      I signed it 9-18-96. I don't know when  
5       we got the check.

6           Q      Okay. Original delivery, however,  
7       under the contract should have been made in April; is  
8       that correct?

9           A      I didn't really calculate it out, but  
10       if you tell me that's --

11          Q      Seven months from September.

12          A      Okay.

13          Q      Would you agree with that?

14          A      Yeah. I would say late April, because  
15       like I said, I'm not sure what time -- when we got  
16       the check.

17          Q      And the payment terms, could you please  
18       tell us what the payment terms are in the contract.

19          A      Thirty-three percent with order and 67  
20       percent after delivery.

21          Q      And did you receive Grote's -- did you  
22       receive Grote's down payment of 33 percent?

23          A      Yes.

24          Q      Could you turn to page six for me. At

1       the very top of page six, could you read what it  
2       says.

3           A     Time is of the essence. Failure by  
4       Kearney to meet the delivery date set forth in this  
5       contract constitutes breach of contract in which case  
6       Kearney agrees to refund the entire down payment  
7       within ten days of request by Grote.

8           Q     Is that your initials up there?

9           A     Yes.

10          Q     Okay. Did you receive a request by  
11       Grote for the return of their down payment?

12          A     Yes. After it had been delivered.

13          Q     Okay.

14          A     And accepted.

15          Q     Did you refund the down payment?

16          A     No, I did not.

17          Q     Could you read number seven for me?

18       You don't have to read the whole thing, but could you  
19       just tell me what that is regarding.

20          A     It's a warranty.

21          Q     And basically -- and the very first  
22       paragraph, what does the warranty state?

23          A     It states a one-year warranty after  
24       date of shipment to the buyer.

1                   Q     Okay. I want to go back to the point  
2     that you had just made a few minutes ago when we were  
3     talking about failure to return the down payment  
4     after you got notice. You stated that the machine  
5     was accepted; is that correct?

6                   A     Um-hmm.

7                   Q     When, exactly, was the machine accepted  
8     by the Grote Company?

9                   A     On the date that we delivered the  
10    machine. Delivery acceptance.

11                  Q     Did anybody from the Grote Company ever  
12    tell you that the machine was acceptable, or any of  
13    your engineers?

14                  A     When we delivered it was nighttime. I  
15    don't know that there was anyone in, except your  
16    father was there, I think. I don't know.

17                  Q     Was the machine ready to be run upon  
18    delivery? Could it be used in production?

19                  A     No machine is ever ready to run --

20                  Q     Once it was installed by the engineers  
21    was it ready for production?

22                  A     Yes.

23                  Q     Were any other modifications or changes  
24    made to the machine after it was installed by the

1 engineers?

2 A There were some.

3 Q Did these changes or modifications,  
4 would these have affected the production?

5 A Changes -- changes were made to accept  
6 out-of-print carriers. Changes were made to our  
7 feeding equipment to accept out-of-print carriers.

8 Q Were there any changes made that didn't  
9 have anything to do with the carriers at all?

10 A I'm not sure.

11 Q Was Grote Company making parts for  
12 Innomation at that time for these changes?

13 A Grote Company offered to make parts,  
14 yes.

15 Q Was the machine capable of meeting the  
16 production speeds that we just discussed in this  
17 contract at the time that it was delivered?

18 A We had no idea of speeds since we had  
19 not had the proper cardboard carriers to fully test  
20 it. So basically I don't know.

21 Q But there were changes and  
22 modifications made to the machine that didn't have  
23 anything to do with the carriers; is that right?

24 After the time --

1           A     I know there were some enhancements.  
2     Since we were waiting for the carriers there were  
3     some enhancements, but the machine was ready to run  
4     when shipped.

5           Q     Why wasn't the machine run then? Do  
6     you know?

7           A     Because we didn't have the carriers  
8     that were to spec.

9           Q     Did you make any changes to the  
10    carriers?

11          A     We did make one change to the carriers.

12          Q     When was that?

13          A     I'm not sure.

14          Q     Did that delay the carriers?

15          A     Possibly. I don't know. You would  
16     have to check with your purchasing agent.

17          Q     How long would that have delayed the  
18     carriers?

19          A     A week or two maybe.

20          Q     Do you know what the problems were with  
21     the carriers?

22          A     They were out of flatness and there  
23     were perforations missing.

24          Q     Do you know the causes of the problems?

1 A Of the carriers?

2 Q Yes.

3 A They weren't manufactured properly.

4 Q Okay. I'm going to go back a little  
5 bit. Who was the original project engineer on the  
6 blade packaging machine?

7 A Guy Lampe.

8 Q You stated before, I believe, that Guy  
9 had experience with packaging machinery or with  
10 automated equipment; is that right?

11 A Yes.

12 Q Tell me a little bit about his  
13 experience.

14 A I believe that he had about 20 years'  
15 experience working with several companies making  
16 automated equipment.

17 Q Did you at the present --

18 A Without looking at his resume I  
19 couldn't describe in detail.

20 Q Did you use his experience as a selling  
21 point to the Grote Company?

22 A That was one of our strengths, yes.

23 Q Can you tell me when Mr. Lampe left the  
24 company, left Innomation?

1                   A     April of '90 -- last year, '97.

2                   Q     And why --

3                   A     I can't think of -- I don't know the  
4     exact date.

5                   Q     And why did he leave the company?

6                   A     Because I let him go.

7                   Q     Why did you let him go?

8                   A     For insubordination.

9                   Q     How -- describe the insubordination to  
10     me.

11                  A     He talked back to me on -- I guess just  
12     one too many occasions.

13                  Q     Did the reason that he left have  
14     anything to do with the blade packaging machine or  
15     with the Grote Company?

16                  A     He had -- he had -- we had other things  
17     besides the blade packaging machine. Part of -- I  
18     mean, his -- his duties included the blade packaging  
19     machine and quoting other jobs and some sales. And  
20     it had -- my letting him go was due to his  
21     insubordination to me.

22                  Q     So it didn't have anything to do with  
23     the Grote Company or the blade packaging machine?

24                  A     Well, inasmuch as it was his -- part of

1        his project, the whole scope, all his duties were --  
2        I was unhappy with his insubordination concerning all  
3        of his duties.

4            Q        Were you unhappy with his performance  
5        on the blade packaging machine itself?

6            A        There was some aspects that I was not  
7        unhappy with his performance.

8            Q        What were the problems that he had --  
9        that you had with his performance regarding the blade  
10      packaging machine?

11          A        I'm just trying to refresh my memory.  
12          It's been --

13          Q        Take your time.

14          A        One -- let's see. Well, one, he failed  
15      to deliver a report to me concerning the entire  
16      status of the entire machine.

17          Q        Anything else that you can remember?

18          A        His -- he went over budget using  
19      outside sources for time and material with those type  
20      terms that I was not pleased with.

21          Q        Anything else?

22          A        No. Not that I can recall.

23          Q        Did you have any involvement with his  
24      design of the machine?

1                   A     I sourced the twist tie units myself.  
2     Well, not myself, but I helped him with that.

3                   Q     Did you have any other involvement in  
4     the design of the machine?

5                   A     Not much. I can't think of specifics.

6                   Q     Did you have any discussions with  
7     Mr. Lampe regarding any problems with the blade  
8     packaging machine prior to his leaving?

9                   A     No. I fired him very quickly.

10                  Q     Before you fired him, did you have any  
11     discussions about any problems that he was having or  
12     you were having with the design of the machine?

13                  A     As I mentioned previously, I was  
14     unhappy that I didn't have a report done and also  
15     that -- the only thing that I think the day I fired  
16     him I was upset with was that he hadn't made an  
17     appointment for the following day that he either put  
18     aside or forgot, whatever. But I thought that he was  
19     supposed to make an appointment.

20                  Q     Did that have to do with the Grote  
21     Company?

22                  A     With Cincinnati Belting and Supply.  
23     So I had to make that appointment after I fired him.

24                  Q     Did Guy keep any documents, records,

1 designs, drawings, on the blade project?

2 A Did he keep them in his possession?

3 Q Did he have any --

4 A Oh, does he?

5 Q At Kearney.

6 A Of course he does.

7 Q Do you have possession of those  
8 documents?

9 A I have possession of most of them, I  
10 believe.

11 MS. HOCHANADEL: Okay. And again --

12 A But I'm -- I'm -- what he took with  
13 him, I couldn't tell you.

14 Q Do you believe he took anything with  
15 him regarding the blade project?

16 A I don't think so, but I'm not -- I'm  
17 not positive.

18 MS. HOCHANADEL: And, again, I'm sure I  
19 requested this before but --

20 A I know --

21 MR. MELVILLE: We understand.

22 A Yeah.

23 Q Then have you reviewed the documents  
24 that he had left?

1 A Some of them I have, yes.

2 Q Did you see any problems in the design  
3 of the packaging machine from the documents that he  
4 left?

5 A No.

6 Q Did he have any documents regarding  
7 initial conversations with Grote employees regarding  
8 the design of the machine?

9 A I'm sure that there are some notes that  
10 he took at some of the meetings.

11 Q Okay. Tell me about the process of  
12 designing and manufacturing the blade machine, the  
13 problems that you ran into.

14 A Over the whole period?

15 Q Before it was delivered.

16 A We were under intense pressure from  
17 Grote from the start for delivery, and the twist tie  
18 units requested by Grote were a very late addition to  
19 this project so --

20 Q Explain to me what you mean by that.

21 A I mean like two weeks prior to the  
22 order we were to -- it was decided by John Berry that  
23 it's got to have twist tie units.

24 We had worked for six months on a

1        design without twist tie units. The blades were to  
2        be secured by the cardboard carrier that Guy  
3        invented.

4                And at the very late -- like just prior  
5        to the order, I don't know if it was days or weeks,  
6        but he said it's got to have twist tie units.

7                So our major problem was finding a  
8        suitable twist tie unit which would fit underneath  
9        the machine.

10          Q        Did you understand at the time that you  
11        entered into the contract that the contract involved  
12        twist ties?

13          A        Yes. I signed the contract.

14          Q        When you say you were under intense  
15        pressure from Grote for delivery, what do you mean by  
16        that? From the very beginning? Was that delivery  
17        date made known that you had to achieve that delivery  
18        date?

19          A        No. It was -- it was cutting our lead  
20        time from what we wanted, nine months to seven  
21        months, was what I consider our intense pressure from  
22        Grote to shorten that lead time.

23          Q        I see.

24          A        Prior to the order.

1                   Q     But you understood when you entered  
2     into the contract that the delivery time would be  
3     seven months; is that right?

4                   A     The requested delivery time was to  
5     deliver in seven months, yes.

6                   Q     And that's the delivery time that you  
7     agreed upon when you entered into the contract; is  
8     that right?

9                   A     On paper, yes.

10                  Q     Did you have any verbal conversations?

11                  A     Yes, I did.

12                  Q     Tell me a little bit about those.

13                  A     I told Chuck and John that we'll do the  
14     very best we can. I told them that we are concerned  
15     with the addition of the twist tie units.

16                  And I was told that we're not going to  
17     hold you to the seven months. If you're a little bit  
18     late, that's okay.

19                  Q     Do you have anything in writing saying  
20     that, any letters, memos, anything extending that or  
21     making that delivery date more lenient from the Grote  
22     Company or signed by the Grote Company?

23                  A     Do you mean towards the end of the  
24     project or do you mean right at that time did they --

1 Q At that time.

2 A Send me a statement saying yes, we  
3 agree?

4 Q Right.

5 A No. I don't have anything in writing  
6 of that.

7 Q Okay.

8 A I don't have a response in writing.

9 Q Tell me why the delivery date had to be  
10 extended.

11 A Because the machine was not ready to  
12 ship.

13 Q Why wasn't the machine ready to ship?

14 A We never had enough carriers to really  
15 completely debug it. We had to work with what we  
16 had. That was one reason.

17 Q Any other reasons?

18 A There were other reasons. In the midst  
19 of the order my engineer was contacted by Chuck Searl  
20 and specifically asked to look into printing  
21 equipment for this project which took my engineer,  
22 Guy Lampe, at least two, three weeks to investigate,  
23 get an answer on a formal quote to Chuck. That  
24 delayed -- that took up my engineer's time.

1                   Q     At that point in time did your engineer  
2     or yourself ever talk to Chuck or anybody at the  
3     Grote Company about the fact that that was going to  
4     extend the delivery date?

5                   A     I don't know if Guy did or not.

6                   Q     And do you have any -- anything in  
7     writing to the effect that that was going to extend  
8     the delivery date, the fact that he needed to spend  
9     time on another proposal?

10                 A     No. I don't have anything in writing.

11                 Q     Any other problems -- any other reasons  
12    why the machine -- why we had to extend the delivery  
13    date?

14                 A     Well, other than what -- other than  
15    some technical problems of materials and machine  
16    parts and the things that are typical with custom  
17    machining, program changes. We also had one case of  
18    blades that we tried running.

19                 And I can't give you a specific date  
20    that we -- that we were told -- and I can't -- I  
21    can't tell you if it was like 85-inch blades, but we  
22    found out after a couple days of trying to program  
23    these things that they were not, in fact, 85-inch  
24    blades, they were 87. So we were sent -- we were

1 sent bad blades by Bill.

2 Q Any other problems?

3 A Not that I can -- just general  
4 problems.

5 Q So there were other problems besides  
6 the carriers; is that right?

7 A Yes. There were some other problems.

8 Q Okay. And --

9 A At that early -- at that early stage.

10 Q And when was the machine actually  
11 delivered?

12 A According to you guys or us?

13 Q According to you.

14 A The true date is July 9. I -- I take  
15 that back. I don't know if it's the 7th or 9th.  
16 It's -- it's between the 7th, 9th. It's a  
17 Wednesday. The --

18 Q Do you have records --

19 A Yes.

20 Q -- showing the delivery?

21 A Yes. We have truck receipts for rental  
22 equipment.

23 MS. HOCHANADEL: And, again, I'm sure  
24 they would be included in my request, but I

1                   would like to have records of those.

2                   A      Um-hmm.

3                   Q      Before the machine was delivered, did  
4                   you ever have any conversations with anybody from the  
5                   Grote Company regarding the speed of the machine?

6                   A      Yes.

7                   Q      Tell me about those conversations.

8                   A      You're saying before it was delivered?

9                   Q      Um-hmm.

10                  A      On the visit to Innomation by John,  
11                  Bill and Chuck in June, I can't recall the exact  
12                  date, maybe 17th or something like that, we ran --  
13                  ran blades for them, I think 10 or 12, and just used  
14                  a crude timing of the sequence and they were running  
15                  at a pace of about 20 seconds each, something like  
16                  that. Approximately.

17                  Q      And what kind of conversations did you  
18                  have regarding the speed?

19                  A      And we told -- we noted that you guys  
20                  said the speed was slower than what we think, and  
21                  then I said we don't know if we're going to be able  
22                  to make this seven blades per minute.

23                  Q      And what was the response from the  
24                  Grote Company?

1                   A     That's okay. Keep working on it. We  
2     still want the machine.

3                   Q     Did the Grote Company -- did anyone  
4     from the Grote Company stress the importance of the  
5     speed?

6                   A     No.

7                   Q     Talk about the speed at all?

8                   A     They said they would like to have it  
9     faster than that but they wanted the machine  
10    regardless.

11                  Q     Did you or any of your engineers  
12    give --

13                  A     Keep working on it.

14                  Q     Did you or any of your engineers  
15    give -- talk about increasing the speed or the fact  
16    that you could increase the speed?

17                  A     We said we can't -- we think we may be  
18    able to increase the speed by changing some motors  
19    and we'll do our best.

20                  And they said fine. That's -- we still  
21    want the machine. Definitely keep working on it.

22                  We'll be back for a run-off in a couple of weeks.

23                  Q     Do you have any documents, records,  
24    notes, anything regarding any of the conversations --

1 A Yes.

2 Q -- that you had?

3 A I have a follow-up letter.

4 Q Okay. Do you have any letters,  
5 anything from anyone from the Grote Company?

6 A No. Grote Company didn't seem to want  
7 to send me any documents, anything in writing all  
8 through the whole course of the --

9 Q What do you mean by that? Did you ever  
10 request items that you didn't receive or --

11 A Everything was done on their part by  
12 phone, except the letter from you.

13 Q Did you see any --

14 A It's the first time I ever saw your  
15 letterhead.

16 Q Did you see any problems with that?

17 A I thought it was strange.

18 Q Were there times where you needed  
19 letters or documents that you didn't receive them?

20 A I thought on some of these issues we  
21 should have had confirmation of receipt of our  
22 letters or written statements from Grote, yes.

23 Q But you communicated by phone?

24 A We communicated by phone, fax, letter.

1 Q Okay. After the machine was delivered,  
2 tell me a little bit about the speed, attempts to  
3 increase the speed, conversations you had about the  
4 speed.

5 A Once we delivered the machine, Grote  
6 did a turnabout as far as stating that the machine  
7 must run seven blades per minute which was a -- which  
8 was totally different from the conversations we had  
9 prior to shipment.

10 Q Did the Grote Company ever say the  
11 machine doesn't have to run seven blades per minute  
12 or 420 blades per hour?

13 A The 420-blades-per-hour figure was not  
14 used by either -- I mean, that only came up when you  
15 wrote a letter canceling the machine.

16 I mean, yes, it's in there, but we --  
17 we -- that term was not used very often.

18 Q Did you actually put that term in the  
19 contract, the 420 blades per hour?

20 A No, I did not.

21 Q Did somebody -- did an employee of  
22 Innomation do that?

23 A I think it was at the request of Grote.

24 Q Do you recall why that was put in

1       there?

2           A     No, I don't.

3           Q     Prior to it saying 420 blades per  
4       minute [sic], do you recall what the previous  
5       proposal said?

6                   MR. MELVILLE: Per hour.

7           Q     Per hour. I'm sorry. 420 blades per  
8       hour. Thank you.

9           A     Our previous quote said seven, I  
10      believe.

11       Q     Seven what?

12       A     Seven -- I believe it said seven blades  
13      per minute, but without looking at the exact  
14      verbiage, I will not bet my life on it.

15       Q     And did all the proposals that you  
16      submitted contain seven blades per minute? Was that  
17      term in there from the beginning?

18       A     That, again, I'm not sure. I mean, I  
19      would have to look back over the proposals.

20       Q     Tell me about the discussions you had  
21      with the Grote Company about the delivery.

22       A     The Grote Company sent John Berry and  
23      Chuck Searl down -- made an appointment, and I  
24      believe it was April 5 because it seemed like it was

1 a day after I let Guy go, so it was a Friday. And we  
2 had lunch at Hooter's in -- across the river in  
3 Kentucky.

4 And at that time I told them that I was  
5 very concerned that your contract seemed to -- or  
6 states that you can cancel the contract at any time.

7 And I told them that I was very  
8 concerned. It made me extremely nervous. And I  
9 asked them, If we're late are you going to cancel  
10 this order?

11 And they said, Absolutely not. We want  
12 this machine and -- you know, no matter when you  
13 deliver it.

14 So I said -- and they said, Well, how  
15 much time do you need?

16 And I said, I don't -- I don't know. I  
17 said I'm -- you know, it's just Matt and myself and  
18 Jay. We'll be working as a contractor so I said I'm  
19 not sure.

20 And they said -- and I asked them for  
21 an extension, at which point they apparently  
22 contacted you and they asked me how much time and I  
23 said I don't know.

24 And they said, Let's just make it for .

1 six weeks and if you need more, okay. But we'll make  
2 the written one for six months -- or six weeks.

7                   And nobody said a word at JE Grote  
8       that, hey, your time's up, cancel the order. John  
9       and Chuck assured me on several occasions that this  
10      will not be -- we still want it no matter when the  
11      delivery is.

12 And I took their word. And in June  
13 when they came down -- never mind. I'll answer the  
14 question.

15 Q Well, you can go on and tell me about  
16 June when they came down. What happened?

17                   A     They said the same thing. We want the  
18 machine. We're not concerned about -- I mean, we  
19 want it as soon as possible, of course, but we'll  
20 give you time to finish it and run it off at your  
21 place and Terry Griffith is not going to cancel this  
22 order. We want this machine definitely.

Q Was this --

34 A And that -- and I had put my trust in

1           their word.

2           Q     Was the machine delivered after the  
3         extension that was given in writing?

4           A     Yes. It was after the extension in  
5         writing.

6           Q     Once the machine was delivered to the  
7         Grote Company, did you have any conversations with  
8         anybody at the Grote Company regarding installing the  
9         machine?

10          A     No, I did not.

11          Q     Did you instruct your engineers to  
12         install the machine?

13          A     I instructed them to assist.

14          Q     Were you aware that your engineer  
15         installed the machine?

16          A     I was aware that they were not given  
17         any help except -- except I think for the drops, the  
18         electrical drops.

19          Q     What is installation assistance? Could  
20         you please describe that for me?

21          A     I mean -- from what I understand, it  
22         means that one of our engineers would be there  
23         directing your people how to -- where to put it, how  
24         to fasten things together. He would be a supervisor.

1                   Q     Were employees of the Grote Company  
2     notified that the machine was being delivered?

3                   A     Yes. They insisted that it be  
4     delivered.

5                   Q     Was a time for installation ever  
6     discussed between yourself or any of the engineers  
7     with anybody from the Grote Company?

8                   A     No. You mean after it was shipped?

9                   Q     Um-hmm.

10                  A     No. It was -- I didn't discuss it with  
11     any of the Grote personnel.

12                  Q     After the machine was shipped, did  
13     engineers from Innomation just begin working on the  
14     machine at that point?

15                  A     I think they were told to by -- I mean,  
16     they did -- they knew we were under pressure by Grote  
17     Company to get the machine up and running. And what  
18     assistance they got, I'm not sure. I was not there.

19                  Q     What did Innomation need to do in order  
20     to get the machine up and running?

21                  A     The machine -- we needed electrical  
22     drops which is standard for just about any -- you  
23     need electricity hooked up to it.

24                  Q     When did those -- when did you get

1       those?

2           A    That was done by Grote but that was --  
3       that's standard in this business. I can't tell you  
4       for sure how soon it -- you know, if it was a day or  
5       week, two weeks. I think within a week.

6           Q    What else was required in order to get  
7       the machine up and running?

8           A    Machines had to be moved by forklifts  
9       into the -- there were several components of the  
10      machine, and three major components they had to be  
11      forklifted, bolted together.

12           There was -- it has substantial  
13      guarding that was -- that was put in place. I'm sure  
14      there's other things that I can't remember. It also  
15      has a conveyor that had to be put in place.

16           Q    Anything else needed to get it up and  
17      running?

18           A    We needed to have good carriers and we  
19      needed to have blades, of course.

20           Q    Was the machine ready to run?

21           A    Yes.

22           Q    Besides that?

23           A    Yes.

24           Q    Okay. And can you describe for me

1 again the changes and modifications that were made  
2 after the machine was there and installed?

3 A After the machine was installed, as I  
4 mentioned previously, Grote started saying to us --  
5 which they didn't previously -- hey, it's got to run  
6 seven blades per minute.

7 Q So they never said that at your  
8 facility?

9 A No. That was a goal, but it was not  
10 a -- it was a goal but it was not a priority.

11 Q But it was --

12 A Until -- until we delivered our machine  
13 to your plant.

14 Q But you were aware, though, that that  
15 was in the contract and that was what was contracted  
16 for; is that correct?

17 A Yes. I was aware that it's in the  
18 contract. But as I stated, it was verbally discussed  
19 at our plant and it was not a priority of JE Grote at  
20 that point prior to delivery.

21 So after delivery when my engineers  
22 told me that, hey, they're starting to say it's got  
23 to run seven blades per minute, then we -- I think we  
24 made some changes to the motors.

1                   And then the rest -- I think most of  
2       the rest of the modifications were due to  
3       inconsistent packaging carriers that we had to --  
4       that we had to figure out how to run these poor  
5       carriers. And we told Grote, Can't do it with these  
6       carriers.

7                   Q      Before the machine was delivered, were  
8       you trying -- were you working with the motors to  
9       increase the speed at that time?

10                  A      I don't know. I mean, I can't -- I  
11       just don't recollect when exactly we started to  
12       change the motors.

13                  Q      Did you ever request that the Grote  
14       Company make any parts for the machine?

15                  A      Me personally?

16                  Q      (Nods head.)

17                  A      No.

18                  Q      Anybody at the -- any of your  
19       engineers?

20                  A      We -- I think we made a few requests  
21       after an offer by either Chuck or John to make the  
22       parts.

23                  Q      And was there any verbal agreement  
24       between yourself or Chuck or John or any other Grote

1 employee regarding the cost of those parts?

2 A No. I assume that it was -- because  
3 they made us ship it early that it was just their --  
4 their way of helping us, since they made it difficult  
5 for us.

6 Q Being in business for 20 years prior  
7 to this, is this a fairly common practice that you  
8 see a customer actually making parts for their own  
9 machine?

10 A Yes, I do. We have other orders where  
11 if there is -- that building a machine is a  
12 partnership and everything is not always in the  
13 contract. So it's not a -- it's not a cut and dried  
14 black and white situation.

15 Yeah. It happens at other -- we do it  
16 ourselves. We make modifications to equipment that  
17 comes in to -- on our own time. We don't always send  
18 it back.

19 We go out and make parts -- we get  
20 parts in that we make modifications to and never  
21 charge the supplier. We do it a lot.

22 Q The contract actually required Kearney,  
23 at that time, now Innomation, to design and  
24 manufacture a machine to wind, coil, package band

1       blades; is that right?

2           A     Wind, coil, twist tie --

3           Q     And package at 420 blades per minute --  
4       per hour?

5           A     Yes. But as I said, not all your  
6       blades.

7           Q     Does that state that anywhere in the  
8       contract?

9           A     I don't know. I mean, it's a rather  
10      lengthy contract. I would have to go through it  
11      again.

12          Q     How many parts did Grote make for the  
13      machine? Do you know?

14          A     I don't know.

15          Q     Tell me about the final run-off on  
16      May -- or on December 5.

17          A     I wasn't in attendance. So what do you  
18      want to know?

19          Q     Tell me what happened, to your  
20      knowledge.

21          A     To my knowledge, our machine ran very  
22      well.

23          Q     Was the machine ever able to reach the  
24      speed required in the contract?

1           A     The machine never was tested  
2 professionally for speed with someone that's -- as  
3 far as I know, I don't know that Grote figures  
4 indicate who was running the machine when things were  
5 tested. So I can't say that it was fairly tested.

6           Q     Do you know of any problems with the  
7 blades as a result of the machine?

8           A     I know that we ran a scalloped blade  
9 which was a surprise to us that it was chosen and it  
10 was not -- our machine was not intended to grab that  
11 blade, and I believe that particular blade broke the  
12 twist ties on several occasions.

13          Q     Do you know of any other problems that  
14 occurred during the final run-off?

15          A     Yes. An operator -- it was mostly  
16 operator error, sticking hands in the light curtain  
17 stopping operator production.

18               That's another thing. I don't know if  
19 that time of the clock kept ticking as you were -- as  
20 one of your employees stopped it by mistake and -- so  
21 there was no one trained on that machine.

22          Q     This machine, though, was intended for  
23 a regular production operator, though; is that  
24 correct?

1 A With training.

2 Q Is it -- did your engineer have any  
3 problems as far as with the machine?

4 A He cut himself because he was trying to  
5 load too fast.

6 Q Did the engineer rip the light or the  
7 light curtain? Is that what you call it?

8 A Yeah.

9 Q Yeah.

10 A Our engineer?

11 Q Um-hmm.

12 A I don't know. He may, but I know that  
13 your employee, Bill, tripped it several times. And  
14 it's not a -- that's to be expected because he never  
15 ran the machine before.

16 Q Had Jay had a lot of experience running  
17 the machine or trying to run the machine?

18 A No. Not a lot because we never had the  
19 carriers that were -- that made it possible for us to  
20 do continual runs.

21 Q Was Jay actually the product engineer  
22 that designed the machine?

23 A Guy Lampe designed the machine.

24 Q What was Jay's role then?

1 A With training.

2 Q Is it -- did your engineer have any  
3 problems as far as with the machine?

4 A He cut himself because he was trying to  
5 load too fast.

6 Q Did the engineer rip the light or the  
7 light curtain? Is that what you call it?

8 A Yeah.

9 Q Yeah.

10 A Our engineer?

11 Q Um-hmm.

12 A I don't know. He may, but I know that  
13 your employee, Bill, tripped it several times. And  
14 it's not a -- that's to be expected because he never  
15 ran the machine before.

16 Q Had Jay had a lot of experience running  
17 the machine or trying to run the machine?

18 A No. Not a lot because we never had the  
19 carriers that were -- that made it possible for us to  
20 do continual runs.

21 Q Was Jay actually the product engineer  
22 that designed the machine?

23 A Guy Lampe designed the machine.

24 Q What was Jay's role then?

1 would be confidential.

2 Q Do you have any patents on that  
3 technology?

4 A We can't discuss that.

5 Q You can't discuss it?

6 A No. It's really none of your business  
7 at this point.

8 MS. HOCHANADEL: Can we go off the  
9 record for a minute.

10 (A discussion was held off the record)

11 Q Do you have a patent on the technology  
12 that you believe that Grote misappropriated?

13 MR. MELVILLE: That's the same question  
14 you just answered.

15 A I just answered.

16 MR. MELVILLE: She wants it on the  
17 record.

18 Q Could you answer on the record.

19 A Oh, we have a patent application -- or  
20 we have consulted a patent attorney.

21 Q Okay. Do you have a patent at this  
22 time?

23 A No.

24 Q And state again what the technology is,

1 A Jay's role is senior project engineer.

2 Q What impact did he have on the machine?

3 A Jay designed the winding head and he  
4 was involved in the project, since I hired him in  
5 April. I mean, he was involved previous to that. He  
6 did the actual CAD design.

7 Q Do you believe that some of the  
8 problems you had with the machine were as a result of  
9 Guy leaving the company?

10 A No. I would say we have a better  
11 machine.

12 Q Tell me why you believe that Grote  
13 attempted to copy the blade packaging machine.

14 A I don't think that I ever said you  
15 copied the blade packaging machine. You did copy  
16 some of our technology.

17 Q What was that?

18 A Our blade carriers.

19 Q And did you ever have any type of  
20 confidentiality agreements with anyone at the Grote  
21 Company regarding the blade carriers?

22 A I don't know. I don't know if that was  
23 on our prints or if that was -- it was -- Grote  
24 Company is our customer. We would expect that it

1 what you are currently applying for a patent on.

2 A I need to consult with my attorney.

3 MR. MELVILLE: Just tell them what your  
4 understanding is, Chris.

5 Let the record show that Mr. Kearney is  
6 not a patent attorney and not really  
7 qualified to give an opinion as to the  
8 patent, although he can tell you what he has  
9 discussed regarding the patent.

10 A We have invented the whole machine. We  
11 have invented the blade carrier and we are pursuing  
12 patents.

13 Q By the blade carrier, do you mean the  
14 piece of cardboard --

15 A Yes.

16 Q -- that the blade is attached to?

17 A Yes.

18 Q Is that exactly what you believe that  
19 Grote has misappropriated, that carrier itself?

20 A Yes, I believe that.

21 Q Is there any other part of your  
22 technology that you believe Grote has attempted to  
23 copy?

24 A My own personal beliefs?

1 Q Um-hmm.

2 A Yes, I do.

3 Q Could you please tell me why -- why you  
4 believe that Grote, first of all, has attempted to  
5 copy the carrier itself?

6 A Well, I've seen your carriers.

7 Q Tell me what you've seen. What have  
8 you seen?

9 A I've seen four or five pallets of  
10 carriers, cardboard carriers similar to our design.

11 Q Were they used with this machine, were  
12 they used with this blade packaging machine?

13 A I don't know. I didn't see them in  
14 use.

15 Q How did you see these cardboard  
16 carriers?

17 A Jay and I went up to take pictures of  
18 my machine for other -- for our own purposes, and as  
19 Jay stated, we looked -- we noticed them sitting  
20 there.

21 Q Did you do that without the knowledge  
22 of the Grote Company?

23 A We walked in the open door which is the  
24 way we've always gone to look at our machine or to

1                   They were poking around looking all  
2                   around the machine at its operation and they were  
3                   also filming our machine.

4                   Q     So that's kind of an impression you  
5                   have, then, from what you saw at the run-off or what  
6                   your engineers saw?

7                   A     And -- yes. And the questions posed to  
8                   my engineers during the course of the building of the  
9                   machine were -- leads us to believe that it's going  
10                  to be copied.

11                  Q     But you're not aware of any type of  
12                  confidentiality agreements that were signed?

13                  A     With the JE Grote Company?

14                  Q     Yes. Or with any employees of the  
15                  company?

16                  A     No, I'm not.

17                  (Whereupon, Plaintiff's Exhibit Number  
18                  4 was marked for identification.)

19                  Q     I'd like to hand you Plaintiff's  
20                  Exhibit Number 4. Could you please tell me what this  
21                  is.

22                  A     It's a quote.

23                  Q     Okay. Could you look at the drawing  
24                  after page four. Do you see any type of markings of

1 confidentiality on this drawing, anything that says  
2 it's a trade secret of Innocation or Kearney  
3 Magnetics?

4 A I don't see that wording.

5 Q Do you see that in any other way?

6 A I see that it's our drawing.

7 Q What's it a drawing of?

8 A It's a drawing of a packaging machine.

9 Q Okay. Would you look at the next  
10 page. What's this a drawing of?

11 A It's a drawing of our packaging  
12 machine, designed by us.

13 Q And this was included in this quote  
14 number KME0047; is that correct?

15 A That is -- it's included, but I'm not  
16 sure that we -- I mean, it's included, but if it was  
17 included in the original, I don't know.

18 Q Okay. Did you send other types of  
19 drawings, preliminary concept drawings to the Grote  
20 Company about the blade packaging machine before the  
21 order and during the order?

22 A I don't know.

23 Q If you would have, would you -- do you  
24 know if there was any type of confidentiality stamps,

1 proprietary stamps on any of the information that you  
2 would have sent?

3 A I don't know.

4 Q Was there on these? Was there any  
5 stamps of confidentiality or proprietary information  
6 on these two drawings that were included in the  
7 original -- one of the original proposals?

8 A Stamps on, no. I trusted JE Grote  
9 Company.

10 Q Okay.

11 A But as far -- to answer your question  
12 fully, I don't know. As I said, I see what's -- I  
13 answered your question about this, but as far as  
14 other drawings, I would have to look at my files.

15 Q Okay. Any other reasons that you  
16 believe that we copied your machine?

17 A That you have copied it or you will  
18 copy once this is over?

19 Q Just any other reasons that you believe  
20 this.

21 A Yes.

22 Q Please tell me, what are those  
23 reasons?

24 A I believe that there are other machines

1       in your plant that have been copied from other  
2       manufacturers.

3           Q     How do you have reason to believe that?

4           A     I was told by another company that JE  
5       Grote made four or five trips into their plant before  
6       they -- before Grote made their original grinder and  
7       they copied the techniques.

8           Q     Any other reasons?

9           A     The constant -- the constant presence  
10      of engineers while my workers were working made me --  
11      is another reason.

12           I thought that there was more reason  
13      for them being there other than that they were  
14      watching what we do, how we do it, how our mechanisms  
15      worked, and their questions about the operation of  
16      the machine, that it didn't have to do with your  
17      blades.

18           Q     Okay. Tell me about the carriers that  
19      you saw on your visit to the Grote Company, the ones  
20      that you believe -- you believe that these are  
21      copies; is that correct?

22           A     Yes, I do.

23           Q     What is actually copied? What do you  
24      believe has been copied?

1 A The whole concept.

2 Q The concept?

3 A The material, the tabs, cutouts.

4 Q Is it exactly the same, the carrier?

5 A Very close.

6 Q Are there any differences -- were there  
7 any differences that you observed?

8 A I don't know. I just -- you know, I  
9 can't -- didn't take a real close look at them.

10 Q But you did take pictures; is that  
11 right?

12 A I have one picture, yes, maybe two.

13 MS. HOCHANADEL: Okay. And, again,  
14 they should be requested in my production,  
15 but I would like to make sure I get any type  
16 of pictures that you took.

17 A Um-hmm.

18 Q So you have a picture but you're not  
19 quite sure if it's exactly the same carrier? You say  
20 it's very close; is that right?

21 A That's right. I'm not sure exactly. I  
22 know it's not exactly our -- I know it's not our  
23 carrier, but I know it's very, very similar.

24 Q So there are differences though?

1 A There may be some differences.

2 MS. HOCHANADEL: Okay. I don't have  
3 any other questions.

4 MR. MELVILLE: We have no questions at  
5 this time.

6 (Deposition concluded at 2:30 p.m.)

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11 CHRISTOPHER KEARNEY

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